

**BEFORE THE
DEPARTMENT OF FOOD AND AGRICULTURE
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of:

Jose Berumen
Dba Berumen Boyz Farms
PO Box 11428
Westminster, CA 92685

Appellant

File No. 02202014-CFM-1

**DECISION AND ORDER
ON APPEAL**

**I.
STATEMENT OF THE CASE**

On February 19, 2014, the Orange County Agricultural Commissioner/Director of Weights and Measures (hereinafter "Respondent") formally issued a Notice of Proposed Action, Grounds Therefore, and Opportunity to Be Heard (hereinafter "Notice") to Jose Berumen, dba Berumen Boyz Farms (hereinafter "Appellant"). The Notice was for violation of California Food and Agricultural Code Section 47002 and Title 3 of the California Code of Regulations (hereinafter "3 CCR"), Section 1392.4(a), which prohibits certified farmers from selling produce not of their own production. The Respondent sought to recover an administrative civil penalty in the amount of one thousand dollars (\$1,000) and suspend Jose, Manuel, Ann, Daniel, and Jaime Berumen from participation in any California Certified Farmers' Market (hereinafter "CFM") for eighteen (18) months for selling produce not of their own production.

Hearing Officer Kathy Kilar conducted a hearing on April 14, 2014, with both parties in attendance. At the hearing, Jose Berumen agreed to have Ann Berumen act as translator. Hearing Officer Kilar determined that Appellant had committed the violations and upheld the proposed penalty payment of one thousand dollars (\$1,000) and suspension from participation in any California Certified Farmers' Market for eighteen (18) months. On May 29, 2014, the Respondent adopted the decision as submitted. On June 26, 2014, the Appellant submitted an appeal to the Secretary of the Department of Food and Agriculture (hereinafter "Department") on June 26, 2014 on the basis that he has been subject to unfair treatment by the Orange County Agricultural Commissioner's Office and that an eighteen (18)-month suspension will cause an economic hardship.

**II.
STANDARD OF REVIEW**

The Department may not consider evidence outside the records, but must consider the entire record, and deny the appeal if there is any substantial evidence to support the findings. (*Smith v. County of Los Angeles* (1989) 211 Cal.App.3rd 188, 198-199) Substantial evidence is

defined as evidence of “ponderable legal significance” which is “reasonable in nature, credible and of solid value”, distinguishable from the lesser requirement of “any evidence.” (*Newman v. State Personnel Board* (1992) 10 Cal.App.4th 41, 47; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873) In other words, the Department cannot substitute its judgment for the judgment of the finder of fact if there is enough relevant and reliable information to establish a fair argument in support of the result, even if other results might have also been reached. (*Smith v. County of Los Angeles, supra*; *Bowers v. Bernards, supra*, 10 Cal.App. 4th at 873-874)

III. STATEMENT OF FACTS

The California Certified Farmers’ Market Program, Section 47000 *et seq.* of the California Food and Agricultural Code, establishes Direct Marketing by directing the Secretary and county agricultural commissioners under the supervision and direction of the Secretary, to enforce regulations adopted under 3 CCR Section 1392 *et seq.* Under the requirements of this program, producers are issued certificates in accordance with the requirements of the Direct Marketing Program, commonly known as the Certified Farmers’ Market Program. Certificate holders can sell only agricultural commodities that they have produced directly to the public. If a violation occurs, the Secretary or county agricultural commissioner may take any corrective action as specified in this act.

Appellant has been a farmer for over 30 years and is the owner of Berumen Boyz Farms, which sells produce at CFMs.

Inspector Damara Trumbauer (hereinafter “Inspector Trumbauer”) testified that she has been an inspector for six years and has all five agricultural inspector licenses issued by the State, including commodities regulation which covers CFMs. On December 4, 2013, Inspector Trumbauer testified that she conducted a routine inspection of Appellant’s stall at the Tustin CFM and found him selling various vegetables, including celery.

Inspector Otto Rieger (hereinafter “Inspector Rieger”) has worked as an inspector for the Respondent for 8 years and has all five agricultural inspector licenses issued by the State, including commodity inspection. Inspector Rieger testified that he conducted inspections of Appellant’s growing locations on September 9, 2013 and December 9, 2013. At the September 9, 2013 inspection of the Appellant’s growing location, Inspector Rieger found evidence of celery growing, but determined it was not harvestable. At the December 9, 2013 inspection, Inspector Rieger did observe celery at Appellant’s growing location (Exhibit 7). Inspector Rieger stated that he found a spotty single planting around the growing location and did not see any celery in September that would have been ready for harvest in December.

Program Supervisor Donna Barnes testified that inspection photographs of the celery at Appellant’s growing location did not match the celery sold at the Tustin CFM. She stated that celery typically grown in Orange County is dark green in color, with a sprawling growing habit, and a first internode at 5-6 inches. Celery grown at the Appellants growing location, if mature, would be typical Orange County celery. The celery sold at the Tustin CFM was lighter in color, had stalks 10-12 inches in length, and the first internode was 8-9 inches long.

The Appellant testified that the Respondent does not have substantial evidence to prove he did not grow the celery in question and disagrees with the details of events described by the Respondent. Appellant stated that Inspector Rieger did not ask to see the celery at the December

9, 2013 inspection and that he did not inspect the entire field. Appellant denied that he sold celery that was not of his own production

IV. DETERMINATION OF ISSUES

Appellant objects to the findings of the Hearing Officer on the basis that he is not guilty of selling products not of his own production. The Appellant also claims that he has been harassed and treated unjustly by the Respondent. Most of the situations described by the Appellant are not relevant to the appeal, but he does raise due process concerns. Specifically, the Respondent had, at a previous hearing, provided an interpreter to the Appellant and had informed Appellant that the April 14, 2014 hearing would be conducted in the same manner. At the April 14, 2014 hearing, there was no interpreter. Respondent told Appellant that the hearing could be delayed to get an interpreter, but during that time his certification would not be renewed.

The evidence supports a finding that the Appellant violated 3 CCR Section 1392.4, which is a serious violation under Food and Agricultural Code Section 47025(c). However, because Appellant was not provided an interpreter, the Department's Legal Office has determined that the Appellant did not receive adequate due process. As such the appeal is granted

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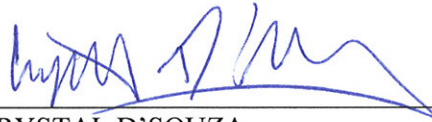
Appellant)
_____))

**V.
DECISION**

The Department grants the Berumen Boyz Farms appeal of the Orange County Agricultural Commissioner's Decision and Order.

This Decision and Order shall be effective SEPTEMBER 15, 2014.

IT IS SO ORDERED this 15TH day of AUGUST, 2014.



CRYSTAL D'SOUZA
Staff Counsel
California Department of Food and Agriculture

APPELLANT'S RIGHT TO SEEK JUDICIAL REVIEW

Judicial review of the decision of the Department may be sought within thirty (30) days of the effective date of this decision pursuant to Section 1094.5 of the California Code of Civil Procedure.